

Effective 5/12/2015

Part 3
Targeted Business Income Tax Credit in an Enterprise Zone

63N-2-301 Title.

This part is known as "Targeted Business Income Tax Credit in an Enterprise Zone."

Enacted by Chapter 283, 2015 General Session

63N-2-302 Definitions.

As used in this part:

- (1) "Allocated cap amount" means the total amount of the targeted business income tax credit that a business applicant is allowed to claim for a taxable year that represents a pro rata share of the total amount of \$300,000 for each fiscal year allowed under Subsection 63N-2-305(2).
- (2) "Business applicant" means a business that:
 - (a) is a:
 - (i) claimant;
 - (ii) estate; or
 - (iii) trust; and
 - (b) meets the criteria established in Section 63N-2-304.
- (3)
 - (a) Except as provided in Subsection (3)(b), "claimant" means a resident or nonresident person.
 - (b) "Claimant" does not include an estate or trust.
- (4) "Community investment project" means a project that includes one or more of the following criteria in addition to the normal operations of the business applicant:
 - (a) substantial new employment;
 - (b) new capital development; or
 - (c) a combination of both Subsections (4)(a) and (b).
- (5) "Community investment project period" means the total number of years that the office determines a business applicant is eligible for a targeted business income tax credit for each community investment project.
- (6) "Enterprise zone" means an area within a county or municipality that has been designated as an enterprise zone by the office under Part 2, Enterprise Zone Act.
- (7) "Estate" means a nonresident estate or a resident estate.
- (8) "Local zone administrator" means a person:
 - (a) designated by the governing authority of the county or municipal applicant as the local zone administrator in an enterprise zone application; and
 - (b) approved by the office as the local zone administrator.
- (9) "Refundable tax credit" or "tax credit" means a tax credit that a claimant, estate, or trust may claim:
 - (a) as provided by statute; and
 - (b) regardless of whether, for the taxable year for which the claimant, estate, or trust claims the tax credit, the claimant, estate, or trust has a tax liability under:
 - (i) Title 59, Chapter 7, Corporate Franchise and Income Taxes; or
 - (ii) Title 59, Chapter 10, Individual Income Tax Act.
- (10) "Targeted business income tax credit" means a refundable tax credit available under Section 63N-2-305.

(11) "Targeted business income tax credit eligibility form" means a document provided annually to the business applicant by the office that complies with the requirements of Subsection 63N-2-305(8).

(12) "Trust" means a nonresident trust or a resident trust.

Renumbered and Amended by Chapter 283, 2015 General Session

63N-2-303 Rulemaking authority.

In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and for purposes of this part, the office shall make rules:

(1) to determine what constitutes:

- (a) substantial new employment;
- (b) new capital development; and
- (c) a project; and

(2) to establish a formula for determining the allocated cap amount for each business applicant.

Renumbered and Amended by Chapter 283, 2015 General Session

63N-2-304 Application for targeted business income tax credit.

(1)

(a) For taxable years beginning on or after January 1, 2002, a business applicant may elect to claim a targeted business income tax credit available under Section 63N-2-305 if the business applicant:

(i) is located in:

(A) an enterprise zone; and

(B) a county with:

(I) a population of less than 25,000; and

(II) an unemployment rate that for six months or more of each calendar year is at least one percentage point higher than the state average;

(ii) meets the requirements of Section 63N-2-212;

(iii) provides:

(A) a community investment project within the enterprise zone; and

(B) a portion of the community investment project during each taxable year for which the business applicant claims the targeted business tax incentive; and

(iv) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, is not engaged in the following, as defined by the State Tax Commission by rule:

(A) construction;

(B) retail trade; or

(C) public utility activities.

(b) For a taxable year for which a business applicant claims a targeted business income tax credit available under this part, the business applicant may not claim or carry forward a tax credit available under Section 59-7-610, 59-10-1007, or 63N-2-213.

(2)

(a) A business applicant seeking to claim a targeted business income tax credit under this part shall file an application as provided in Subsection (2)(b) with the local zone administrator by no later than June 1 of the year in which the business applicant is seeking to claim a targeted business income tax credit.

(b) The application described in Subsection (2)(a) shall include:

- (i) any documentation required by the local zone administrator to demonstrate that the business applicant meets the requirements of Subsection (1);
 - (ii) a plan developed by the business applicant that outlines:
 - (A) if the community investment project includes substantial new employment, the projected number and anticipated wage level of the jobs that the business applicant plans to create as the basis for qualifying for a targeted business income tax credit;
 - (B) if the community investment project includes new capital development, a description of the capital development the business applicant plans to make as the basis for qualifying for a targeted business income tax credit; and
 - (C) a description of how the business applicant's plan coordinates with:
 - (I) the goals of the enterprise zone in which the business applicant is providing a community investment project; and
 - (II) the overall economic development goals of the county or municipality in which the business applicant is providing a community investment project; and
 - (iii) any additional information required by the local zone administrator.
- (3)
- (a) The local zone administrator shall:
 - (i) evaluate an application filed under Subsection (2); and
 - (ii) determine whether the business applicant is eligible for a targeted business income tax credit.
 - (b) If the local zone administrator determines that the business applicant is eligible for a targeted business income tax credit, the local zone administrator shall:
 - (i) certify that the business applicant is eligible for the targeted business income tax credit;
 - (ii) structure the targeted business income tax credit for the business applicant in accordance with Section 63N-2-305; and
 - (iii) monitor a business applicant to ensure compliance with this section.
- (4) A local zone administrator shall report to the office by no later than June 30 of each year:
- (a)
 - (i) any application approved by the local zone administrator during the last fiscal year; and
 - (ii) the information established in Subsections 63N-2-305(4)(a) through (d) for each new business applicant; and
 - (b)
 - (i) the status of any existing business applicants that the local zone administrator monitors; and
 - (ii) any information required by the office to determine the status of an existing business applicant.
- (5)
- (a) By July 15 of each year, the department shall notify the local zone administrator of the allocated cap amount that each business applicant that the local zone administrator monitors is eligible to claim.
 - (b) By September 15 of each year, the local zone administrator shall notify, in writing, each business applicant that the local zone administrator monitors of the allocated cap amount determined by the office under Subsection (5)(a) that the business applicant is eligible to claim for a taxable year.

Renumbered and Amended by Chapter 283, 2015 General Session

63N-2-305 Targeted business income tax credit structure -- Duties of the local zone administrator -- Duties of the State Tax Commission -- Revenue and Taxation Interim Committee study.

- (1) A business applicant that is certified under Subsection 63N-2-304(3) and issued a targeted business tax credit eligibility form by the office under Subsection (8) may claim a refundable tax credit:
 - (a) against the business applicant's tax liability under:
 - (i) Title 59, Chapter 7, Corporate Franchise and Income Taxes; or
 - (ii) Title 59, Chapter 10, Individual Income Tax Act; and
 - (b) subject to requirements and limitations provided by this part.
- (2) The total amount of the targeted business income tax credits allowed under this part for all business applicants may not exceed \$300,000 in any fiscal year.
- (3)
 - (a) A targeted business income tax credit allowed under this part for each community investment project provided by a business applicant may not:
 - (i) be claimed by a business applicant for more than seven consecutive taxable years from the date the business applicant first qualifies for a targeted business income tax credit on the basis of a community investment project;
 - (ii) be carried forward or carried back;
 - (iii) exceed \$100,000 in total amount for the community investment project period during which the business applicant is eligible to claim a targeted business income tax credit; or
 - (iv) exceed in any year that the targeted business income tax credit is claimed the lesser of:
 - (A) 50% of the maximum amount allowed by the local zone administrator; or
 - (B) the allocated cap amount determined by the office under Subsection 63N-2-304(5).
 - (b) A business applicant may apply to the local zone administrator to claim a targeted business income tax credit allowed under this part for each community investment project provided by the business applicant as the basis for its eligibility for a targeted business income tax credit.
- (4) Subject to other provisions of this section, the local zone administrator shall establish for each business applicant that qualifies for a targeted business income tax credit:
 - (a) criteria for maintaining eligibility for the targeted business income tax credit that are reasonably related to the community investment project that is the basis for the business applicant's targeted business income tax credit;
 - (b) the maximum amount of the targeted business income tax credit the business applicant is allowed for the community investment project period;
 - (c) the time period over which the total amount of the targeted business income tax credit may be claimed;
 - (d) the maximum amount of the targeted business income tax credit that the business applicant will be allowed to claim each year; and
 - (e) requirements for a business applicant to report to the local zone administrator specifying:
 - (i) the frequency of the business applicant's reports to the local zone administrator, which shall be made at least quarterly; and
 - (ii) the information needed by the local zone administrator to monitor the business applicant's compliance with this Subsection (4) or Section 63N-2-304 that shall be included in the report.
- (5) In accordance with Subsection (4)(e), a business applicant allowed a targeted business income tax credit under this part shall report to the local zone administrator.
- (6) The amount of a targeted business income tax credit that a business applicant is allowed to claim for a taxable year shall be reduced by 25% for each quarter in which the office or the

local zone administrator determines that the business applicant has failed to comply with a requirement of Subsection (3) or Section 63N-2-304.

- (7) The office or local zone administrator may audit a business applicant to ensure:
 - (a) eligibility for a targeted business income tax credit; or
 - (b) compliance with Subsection (3) or Section 63N-2-304.
- (8) The office shall issue a targeted business income tax credit eligibility form in a form jointly developed by the State Tax Commission and the office no later than 30 days after the last day of the business applicant's taxable year showing:
 - (a) the maximum amount of the targeted business income tax credit that the business applicant is eligible for that taxable year;
 - (b) any reductions in the maximum amount of the targeted business income tax credit because of failure to comply with a requirement of Subsection (3) or Section 63N-2-304;
 - (c) the allocated cap amount that the business applicant may claim for that taxable year; and
 - (d) the actual amount of the targeted business income tax credit that the business applicant may claim for that taxable year.
- (9)
 - (a) A business applicant shall retain the targeted business income tax credit eligibility form provided by the office under this Subsection (9).
 - (b) The State Tax Commission may audit a business applicant to ensure:
 - (i) eligibility for a targeted business income tax credit; or
 - (ii) compliance with Subsection (3) or Section 63N-2-304.
- (10)
 - (a) On or before November 30, 2018, and every three years after 2018, the Revenue and Taxation Interim Committee shall review the tax credit provided by this section and make recommendations concerning whether the tax credit should be continued, modified, or repealed.
 - (b) In conducting the review required by Subsection (10)(a), the Revenue and Taxation Interim Committee shall:
 - (i) schedule time on at least one committee agenda to conduct the review;
 - (ii) invite state agencies, individuals, and organizations concerned with the credit under review to provide testimony;
 - (iii) ensure that the recommendations described in this section include an evaluation of:
 - (A) the cost of the tax credit to the state;
 - (B) the purpose and effectiveness of the tax credit; and
 - (C) the extent to which the state benefits from the tax credit; and
 - (iv) undertake other review efforts as determined by the chairs of the Revenue and Taxation Interim Committee.

Amended by Chapter 1, 2016 Special Session 3